

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MARCI DOLAN, Civil No. 05-3062-CO

Plaintiff, FINDINGS AND RECOMMENDATION

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

COONEY, Magistrate Judge:

Plaintiff brings this action against her employer pursuant to Title VII of the Civil Rights Act of 1991, 42 U.S.C. § 2000e, alleging her rights to be free from sexual assault, sexual harassment, and a hostile work environment were violated. Plaintiff seeks compensatory damages, equitable relief, attorney fees, and costs.

Plaintiff moves to amend her complaint (#17). Any opposition by defendant was to be filed in Medford by April 17, 2006. None was filed.

DISCUSSION

Fed.R.Civ.P. 15 governs amendments to the pleadings. Leave to amend should be freely given unless the opposing party makes a showing of undue prejudice, bad faith, or dilatory motive on the part of the moving party. See Martinez v. Newport Beach City, 125 F.3d 777, 785 (9th Cir. 1997), overruled on other grounds, Green v. City of Tucson, 255 F.3d 1086 (9th Cir. 2001). The party opposing the amendment has the burden of demonstrating why leave to amend should not be granted. Genetech Inc. v. Abbott Laboratories, 127 F.R.D. 529, 530-531 (N.D.Cal. 1989) (citations omitted).

"The following factors guide a court's determination of whether a motion to amend should be granted: (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party." Forsyth v. Humana, Inc., 114 F.3d 1467, 1482 (9th Cir. 1997) (citation omitted). Undue delay, by itself may be insufficient to deny a motion to amend, but, when combined with other factors, denial could be proper. Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990). "Prejudice to the opposing party is the most important factor." Jackson v. Bank of Hawaii, 902 F.2d 1385,

1387-1388 (9th Cir. 1990) (citations omitted).

In determining whether an amendment is futile or legally insufficient, the court applies the same standards that it would apply to a motion to dismiss for failure to state a claim. Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988) (citation omitted). A complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that plaintiff can plead no set of facts in support of a claim. Id. The court accepts plaintiff's material allegations in the complaint as true and construes them in the light most favorable to plaintiff.

Plaintiff moves to file an amended complaint to add her Federal Tort Claim Act claims. Plaintiff represents that as of October 19, 2005 she has exhausted her administrative remedies. Since there is no written opposition, for the reasons set forth in plaintiff's memorandum in support of her motion to amend, the motion should be granted.

RECOMMENDATION

Based on the foregoing, it is recommend that plaintiff's motion to amend (#17) be granted.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district

court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections with the Court. Thereafter, the parties have ten days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this ____24____ day of April, 2006.

/s/
UNITED STATES MAGISTRATE JUDGE